IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 988 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD. AMBALAL KODARLAL SHAH

Versus

MOHANLAL RAMPRASAD PARDESI

Appearance:

1. Civil Revision Application No. 988 of 2000

MS TRUSHA K PATEL for Petitioner No. 1-1/4

MR BN RAVAL for Respondent No. 1-6

MR RJ SHAH for Respondent No. 1-6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/12/2002

ORAL JUDGEMENT

#. Initially, this Court by its order dated 5.12.2002 rejected this revision, but before the order was signed,

the learned advocate for the petitioners requested that, she should heard again. That is how the earlier order was not signed and that is why the mater was reheard again.

#. The petitioners are the original defendants of Regular Civil Suit No.282 of 1997. The said suit has been filed by the present respondents herein for declaration and injunction. During the pendency of the suit, the original plaintiffs submitted the application Exh.5 for protecting their possession over the disputed property. The trial Court rejected the said application against which the respondents herein preferred the appeal, being Civil Misc. Appeal No.9 of 1998. The Appellate Court came to the conclusion that, it is an admitted fact that the plaintiffs are in possession since 1974. It is found that, by virtue of the agreements Marks 3/1 and 3/2, the plaintiffs were put in possession. Considering the settled possession of the plaintiffs, the Appellate Court found that, the possession of the plaintiffs is required to be protected during the pendency of the suit. Under these circumstances, the appeal of the plaintiffs is allowed by the Appellate Court and the injunction as prayed for was granted. The said order is impugned at the instance of the original defendants in this civil revision application.

#. It is an admitted fact that the plaintiffs are in possession since 1974 as observed by the Appeal Court in para 7 of its order. The learned advocate for the petitioners, however, very vehemently contended that the agreement of sale is not registered agreement, and, therefore, the plaintiffs cannot be protected by the injunction. However, once the plaintiffs are in settled possession since more than two decades and since that fact is not in dispute, in my view, it cannot be said that the Appellate Court has committed any error of law in allowing the appeal filed by the present respondents. The question, whether the plaintiffs have got any title over the suit property, the said question is required to be decided by the trial Court at the time of deciding the suit, but it cannot be said that the plaintiffs are not entitled to interim injunction during the pendency of the suit. Relevant observations of the learned Appellate Judge are as under.:

> "It is true that both the agreements mark 3/1 and 3/2 are unregistered but the delivery of possession is specifically mentioned in this documents and I fail to understand that how a civil court cannot protect the possession pending

final hearing which is admittedly with the plaintiffs since the time of this agreement executed in the year 1974."

#. Under these circumstances, the order of the Appellate Court is not required to be interfered with by this Court while exercising the revisional jurisdiction under Section 115 of the Civil Procedure Code. In view of the decision of the Apex Court reported in AIR 1973 SC 76 it cannot be said that the Appellate Court has committed any error in passing the impugned order. The learned advocate for the petitioners, however, submitted that the Appellate Court, while deciding the appeal under Order 43 of the Civil Procedure Code is not required to appreciate the entire evidence again and cannot set aside the order of the trial Court, unless the said order is perverse. It is, no doubt, true that normally the Appellate Court while deciding the appeal under Order 43 of the Code would be slow to interfere with the order of the trial Court, which is discretionary order in nature. Nonetheless, the Appellate Court is supposed to consider the facts and circumstances of the case. However, even on merits, in my view, the view taken by the Appellate Court is absolutely justified and the view taken by the Appellate Court is the only view, which can be taken in the facts and circumstances of the case. Ms.Patel, learned advocate, for the petitioners, fairly submitted that the present petitioners have also filed the suit against the defendants for getting the decree for possession and the same is pending. If, ultimately, present petitioners succeed in their suit, naturally, they will be entitled to get possession by virtue of the said decree. But, at this stage, the plaintiffs cannot be allowed to be remediless by not protecting their possession during the pendency of the suit. I, therefore, do not find any substance in this revision application. Hence, this revision application is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated. However, in the facts and circumstances of the case, hearing of the pending suit is expedited. The trial Court is directed to dispose of the pending suit expeditiously and preferably by 31.12.2003.

(P.B.Majmudar,J)

(pathan)